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8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**
10 **SAN FRANCISCO DIVISION**

11 PETER RUDOLPH, individually and on
12 behalf of all others similarly situated,

13 Plaintiff,

14 vs.

15 UTSTARCOM, HONG LIANG LU, YING
16 WU, MICHAEL SOPHIE, FRANCIS
16 BARTON, AND THOMAS TOY,

17 Defendants.

Case No. 3:07-CV-04578-SI

**AMENDED [PROPOSED] ORDER
GRANTING PRELIMINARY
APPROVAL OF SETTLEMENT AND
DIRECTING DISSEMINATION OF
NOTICE TO CLASS**

Date: May 29, 2009

Time: 9:00 a.m.

Room: Courtroom 10, 19th Floor

Judge: Hon. Susan Illston

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1 WHEREAS, a securities class action is pending before the Court entitled *Rudolph v.*
2 *UTStarcom, Inc., et al.*, Case No. 3:07-CV-04578-SI (the "Litigation");

3 WHEREAS, the settling parties having made an application, pursuant to Federal Rule
4 of Civil Procedure 23(e), for an order preliminarily approving the settlement of this litigation,
5 in accordance with the Stipulation of Settlement dated as of May 14, 2009 (the "Stipulation"),
6 which, together with the Exhibits annexed thereto sets forth the terms and conditions for a
7 proposed settlement of the Litigation and for dismissal of the Litigation with prejudice upon
8 the terms and conditions set forth therein; and the Court having read and considered the
9 Stipulation and the Exhibits annexed thereto; and

10 WHEREAS, all defined terms contained herein shall have the same meanings as set
11 forth in the Stipulation;

12 NOW, THEREFORE, IT IS HEREBY ORDERED that:

13 1. The terms used in this Order have the same meanings assigned to them in
14 Stipulation.

15 2. The Court does hereby preliminarily approve the Stipulation and the
16 Settlement set forth therein, subject to further consideration at the Final Settlement Hearing
17 described below.

18 3. Pursuant to Rule 23 of the Federal Rules of Civil Procedure and solely for the
19 purposes of the Stipulation and the proposed Settlement, the Court certifies the following
20 Class:

21 All Persons or entities who purchased or acquired shares of UTStarcom common
22 stock at any time during the Class Period.

23 Excluded from the Class are the Defendants, UTStarcom, Hong Liang Lu, Ying Wu,
24 Michael Sophie and Francis Barton; the present and former officers, directors and employees
25 of UTSI; members of the immediate families of Defendants and their legal representatives,
26 heirs, successors or assigns and any entity in which Defendants or their successors have or
27 had a controlling interest. Also excluded from the Class are those Persons who timely and

1 validly request exclusion from the Class pursuant to the Notice of Pendency and Proposed
2 Settlement of Class Action to be sent to Class Members.

3 4. This Court finds and concludes that the Class is ascertainable and that there is
4 a well-defined community of interest in the questions of law and fact involved affecting the
5 Class Members. The Court finds and concludes that (a) the Persons who are part of the Class
6 are so numerous that joinder of all such Persons is impracticable; (b) there are questions of
7 law and fact common to the Class that predominate over any individual questions; (c) the
8 claims of the Lead Plaintiff are typical of those of the Class; (d) in negotiating and entering
9 into the Stipulation, Lead Plaintiff and his counsel have fairly and adequately represented and
10 protected the interests of all Persons who are part of the Class; and (e) a class action is
11 superior to other available methods for the fair and efficient adjudication of the controversy,
12 considering (i) the interests of the Persons who are part of the Class in individually controlling
13 the prosecution of separate actions; (ii) the extent and nature of any litigation concerning the
14 controversy already commenced by Persons who are part of the Class; (iii) the desirability or
15 undesirability of concentrating the litigation of the claims in this particular forum; and (iv) the
16 difficulties likely to be encountered in the management of the Litigation as a class action.

17 5. Pursuant to Rule 23 of the Federal Rules of Civil Procedure and for purposes
18 of the Settlement only, Lead Plaintiff James R. Bartholomew is appointed as Class
19 Representative and Lead Counsel Finkelstein Thompson LLP is appointed Class Counsel.

20 6. If the Stipulation is not approved by the Court or the Settlement is terminated
21 or fails to become effective in accordance with the terms therein, this conditional certification
22 shall be vacated without further order of the Court and without prejudice to the right of any
23 party to seek or oppose class certification thereafter.

24 7. A Final Settlement Hearing shall be held before this Court on September 18,
25 2009, at 9:00 a.m., at the United States District Court, Northern District of California, San
26 Francisco Division, located at 450 Golden Gate Avenue, San Francisco, California to
27 determine whether the proposed Settlement of the litigation on the terms and conditions

1 provided for in the Stipulation is fair, reasonable and adequate to the Class and should be
2 approved by the Court; whether a Judgment as defined in ¶1.16 of the Stipulation should be
3 entered herein; whether the proposed Plan of Allocation is fair, reasonable and adequate and
4 should be approved; and to determine the amount of fees and expenses that should be awarded
5 to Lead Counsel. The Court may adjourn the Settlement Hearing without further notice to
6 Members of the Class.

7 8. The Court approves, as to form and content, the Notice of Pendency and
8 Proposed Settlement of Class Action (the "Notice"), the Proof of Claim and Release form (the
9 "Proof of Claim"), and Summary Notice annexed hereto as Exhibits A-1, A-2 and A-3 hereto,
10 and finds that the mailing and distribution of the Notice and publishing of the Summary
11 Notice substantially in the manner and form set forth in ¶9 of this Order meet the
12 requirements of Federal Rule of Civil Procedure 23 and due process, and is the best notice
13 practicable under the circumstances and shall constitute due and sufficient notice to all
14 Persons entitled thereto.

15 9. The Court appoints the firm of Berdon Claims Administration LLC ("Claims
16 Administrator") to supervise and administer the notice procedure as well as the processing of
17 claims as more fully set forth below:

18 (a) Not later than July 17, 2009 (the "Notice Date"), Lead Counsel shall
19 cause a copy of the Notice and the Proof of Claim, substantially in the forms annexed as
20 Exhibits A-1 and A-2 hereto, to be mailed by first class mail to all Class Members who can be
21 identified with reasonable effort; and Lead Counsel shall cause the Summary Notice to be
22 published once in *Investor's Business Daily* and on PRNewswire; and

23 (b) At least seven (7) days prior to the Final Settlement Hearing, Lead
24 Counsel shall serve on Defendants' counsel and file with the Court proof, by affidavit or
25 declaration, of such mailing and publishing.

1 10. Nominees who held the common stock of UTStarcom, Inc. ("UTSI")
2 purchased during the period beginning September 4, 2002 through July 24, 2007, inclusive,
3 shall send the Notice and the Proof of Claim to the beneficial owners of such UTSI common
4 stock within ten (10) days after receipt thereof, or send a list of the names and addresses of
5 such beneficial owners to the Claims Administrator within ten (10) days of receipt thereof in
6 which event the Claims Administrator shall promptly mail the Notice and Proof of Claim to
7 such beneficial owners.

8 11. All Members of the Class shall be bound by all determinations and judgments
9 in the litigation concerning the settlement, whether favorable or unfavorable to the Class.

10 12. Any potential Member of the Class may request to be excluded from the Class.
11 Such request for exclusion must be postmarked on or before August 21, 2009 and delivered to
12 the Claims Administrator as set forth in the Notice. Such requests shall clearly indicate the
13 name, address and telephone number of the person seeking exclusion and a statement that the
14 sender requests to be excluded from the Class in *Rudolph v. UTStarcom, Inc., et al*, Case No.
15 3:07-CV-04578-SI, and must be signed by such person. Persons requesting exclusion are also
16 directed to state: the date(s), price(s), and number(s) of shares of all purchases, other
17 acquisitions and sales of UTSI shares during the Class Period. A request for exclusion shall
18 not be effective unless it provides the required information and is made within the time stated
19 above, or the exclusion is otherwise accepted by the Court.

20 13. Class Members who wish to participate in the proposed Settlement shall
21 complete and submit Proof of Claim forms in accordance with the instructions contained
22 therein. Unless the Court orders otherwise, all Proof of Claim forms must be submitted no
23 later than October 26, 2009. Any Class Member who does not timely submit a Proof of Claim
24 within the time provided for shall be barred from sharing in the distribution of the proceeds of
25 the Settlement Fund, unless otherwise determined by Lead Counsel or ordered by the Court.

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1 14. Any Member of the Class may enter an appearance in the litigation,
2 individually or through counsel of their own choice, at their own expense. If they do not enter
3 an appearance, they will be represented by Lead Counsel.

4 15. Pending final determination of whether the proposed Settlement should be
5 approved, neither the Lead Plaintiff nor any Class Member, either directly, representatively,
6 or in any other capacity, shall commence or prosecute against any of the Defendants, any
7 action or proceeding in any court or tribunal asserting any of the Released Claims.

8 16. Any Member of the Class may appear and show cause, if he, she or it has any,
9 why the proposed Settlement of the litigation should or should not be approved as fair,
10 reasonable and adequate, or why a judgment should or should not be entered thereon, why the
11 Plan of Allocation should or should not be approved, or why attorneys' fees and expenses
12 should or should not be awarded to Lead Counsel; provided, however, that no Class Member
13 or any other Person shall be heard or entitled to contest the approval of the terms and
14 conditions of the proposed Settlement, or, if approved, the Judgment to be entered thereon
15 approving the same, or the order approving the Plan of Allocation, or the attorneys' fees and
16 expenses to be awarded to Lead Counsel unless that Person has delivered by hand or sent by
17 first class mail written objections and copies of any papers and briefs such that they are
18 received, not simply postmarked, on or before August 21, 2009, by Donald J. Enright,
19 Finkelstein Thompson LLP, 1050 30th Street, N.W., Washington, DC 20007; Terry Johnson,
20 Wilson Sonsini Goodrich & Rosati, 650 Page Mill Road, Palo Alto, CA 94304-1050, and
21 filed said objections, papers and briefs with the Clerk of the United States District Court for
22 the Northern District of California, San Francisco Division, 450 Golden Gate Avenue, San
23 Francisco, CA 94102, on or before August 21, 2009. Any Member of the Class who does not
24 make his, her or its objection in the manner provided shall be deemed to have waived such
25 objection and shall forever be foreclosed from making any objection to the fairness or
26 adequacy of the proposed Settlement as incorporated in the Stipulation, to the Plan of
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1 Allocation, and to the award of attorneys' fees and reimbursement of expenses to counsel for
2 the Lead Plaintiff, unless otherwise ordered by the Court.

3 17. All funds held by the Escrow Agent shall be deemed and considered to be in
4 *custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court, until such
5 time as such funds shall be distributed pursuant to the Stipulation and/or further order(s) of
6 the Court.

7 18. All papers in support of the Settlement, the Plan of Allocation, any application
8 by counsel for the Lead Plaintiff for attorneys' fees and reimbursement of expenses shall be
9 filed and served on or before August 7, 2009.

10 19. The Settling Parties may respond to any objection to the Stipulation, the Plan
11 of Allocation, or the application for attorneys' fees and reimbursement of expenses, provided
12 that such response is filed and served no later than August 28, 2009.

13 20. At or after the Final Settlement Hearing, the Court shall determine whether the
14 Plan of Allocation proposed by Lead Counsel, and any application for attorneys' fees or
15 reimbursement of expenses shall be approved.

16 21. All reasonable expenses incurred in identifying and notifying Class Members,
17 as well as administering the Settlement Fund, shall be paid as set forth in the Stipulation. In
18 the event the Settlement is not approved by the Court, or otherwise fails to become effective,
19 neither the Lead Plaintiffs nor any of their counsel shall have any obligation to repay any
20 amounts actually and properly disbursed from or chargeable to the Class Notice and
21 Administration Fund.

22 22. The Court reserves the right to adjourn the date of the Final Settlement Hearing
23 without further notice to the Members of the Class, and retains jurisdiction to consider all
24 further applications arising out of or connected with the proposed settlement. The Court may
25 approve the settlement, with such modifications as may be agreed to by the Settling Parties, if
26 appropriate, without further notice to the Class.

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1 23. If the Settlement is not approved or consummated for any reason whatsoever,
2 the Settlement and all proceedings had in connection therewith shall be without prejudice to
3 the rights of the Parties status quo ante.

4 IT IS SO ORDERED.

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6 DATED: 5/29/09

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8 _____
9 THE HONORABLE SUSAN ILLSTON
10 UNITED STATES DISTRICT JUDGE

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EXHIBIT A-1

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8 [Additional Counsel Listed on Signature Page]

9 Counsel for Lead Plaintiff James R. Bartholomew

10
11 **UNITED STATES DISTRICT COURT**
12
13 **NORTHERN DISTRICT OF CALIFORNIA**
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15 **SAN FRANCISCO DIVISION**

16 PETER RUDOLPH, individually and on
17 behalf of all others similarly situated,

18 Plaintiff,

19 vs.

20 UTSTARCOM, HONG LIANG LU, YING
21 WU, MICHAEL SOPHIE, FRANCIS
22 BARTON, AND THOMAS TOY,

23 Defendants.

24 Case No. 3:07-CV-04578-SI

25
26 **NOTICE OF PENDENCY AND**
27 **PROPOSED SETTLEMENT OF CLASS**
28 **ACTION**

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30 **EXHIBIT A-1**

NOTICE OF PENDENCY OF CLASS ACTION AND PROPOSED SETTLEMENT

If you purchased or otherwise acquired shares of UTStarcom, Inc. (“UTSI”) common stock between September 4, 2002 and July 24, 2007, inclusive (the “Class”), then you could receive a payment from the proposed settlement of a securities class action.

A federal court authorized this notice. This is not a solicitation from a lawyer.

- The settlement in *Rudolph v. UTStarcom, et al*, 3:07-CV-04578-SI (N.D. Cal.) (the “Action” or the “Litigation”) will provide a \$9.5 million settlement fund, subject to reduction for attorneys’ fees and costs as provided herein, for the benefit of certain investors who purchased or otherwise acquired shares of UTSI stock between September 4, 2002 and July 24, 2007, inclusive (the “Class Period”).
- The settlement resolves a lawsuit concerning allegations that certain investors who purchased or otherwise acquired UTSI shares during the Class Period were damaged as a result of Defendants’ alleged dissemination of materially false and misleading statements and omissions with regards to the Company’s stock option grant practices.
- Your legal rights are affected ***whether you act or do not act***. Please read this notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

SUBMIT A CLAIM FORM	The only way to get a payment if you have a Recognized Claim.
EXCLUDE YOURSELF	Get no payment. This is the only option that allows you to ever be part of any other lawsuit against UTSI. and the other Released Parties about the Released Claims.
OBJECT	Write to the Court about why you do not like the settlement. You may, but are not required to, appear at the settlement hearing.
DO NOTHING	Get no payment. Give up rights.

- These rights and options – and the deadlines to exercise them – are explained in this notice.
- The Court in charge must still decide whether to approve the settlement. Payments will be made to Class members who submit timely and valid Proofs of Claim if the Court approves the settlement and after any appeals are resolved.

SUMMARY OF NOTICE

Statement of Plaintiffs' Recovery

Pursuant to the settlement described herein, a Settlement Fund consisting of \$9.5 million in cash, plus interest (the "Gross Settlement Fund"), has been established. A Class Member's actual recovery will be a proportion of the Net Settlement Fund determined by that claimant's Recognized Claim as compared to the total Recognized Claims of all Class Members who submit valid Proofs of Claim. The number of allegedly damaged UTSI Shares for which claims are submitted, the time during the Class Period when a Class Member purchased UTSI Shares, the purchase price paid, and whether those shares were held at the end of the Class Period or sold during the Class Period, and, if sold, when they were sold, will affect an individual Class Member's recovery. See the Plan of Allocation following Question 25 on page ____ for more information on your Recognized Claim.

Statement of Potential Outcome of Case

15 The parties disagree on both liability and damages and do not agree on the average
16 amount of damages per share that would be recoverable if Lead Plaintiff and the Class were to
17 have prevailed on each claim alleged. The settling Defendants deny that they are liable to the
18 Lead Plaintiff or the Class and deny that Lead Plaintiff or any other member of the Class has
suffered any damages.

1 **Statement of Attorneys' Fees and Costs Sought**

2 Plaintiff's Lead Counsel will apply to the Court for an award of attorneys' fees not to
3 exceed thirty-three and one-third percent (33.33%) of the Settlement Fund (\$3,166,350), plus
4 interest, and for reimbursement of expenses incurred in connection with the prosecution of the
5 case. Plaintiff's Lead Counsel have expended considerable time and effort in the prosecution
6 of the case on a contingent-fee basis, and have advanced the expenses of the litigation, in the
7 expectation that if they were successful in obtaining a recovery for the Class, they would be
8 paid from such recovery. In this type of litigation, counsel are typically awarded a percentage
9 of the common fund recovery as their attorneys' fees.

10 **Further Information**

11 Further information regarding the Action and this Notice may be obtained by
12 contacting Plaintiff's Lead Counsel: Donald J. Enright, Esq., Finkelstein Thompson LLP,
13 Duvall Foundry, 1050 30th Street, N.W., Washington, D.C. 20007, Toll-free phone (877) 337-
14 1050 or the Claims Administrator by mail at UTStarcom Securities Litigation, c/o Berdon
15 Claims Administration, P.O. Box 9014, Jericho, NY 11753-8914; by toll-free phone at (800)
16 766-3330; by fax at: (516) 931-0810; or by visiting the website www.berdonclaims.com.

17 **Reasons for the Settlement**

18 For the Plaintiff Class, the principal reason for the settlement is the benefit to be
19 provided to the Class now. This benefit must be compared to the risk that no recovery might
20 be achieved after a contested trial and likely appeals, possibly years into the future. For the
21 settling Defendants, who deny all allegations of wrongdoing or liability whatsoever, the
22 principal reason for the settlement is to eliminate the expense, risks and uncertain outcome of
23 the litigation.

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BASIC INFORMATION**1. Why did I get this notice package?**

2
3 You or someone in your family may have purchased or otherwise acquired shares of
4
5 UTSI common stock between September 4, 2002 and July 24, 2007, inclusive.

6 The Court directed that this Notice be sent to potential Class Members because they
7 have a right to know about a proposed settlement of a class action lawsuit, and about all of
8 their options, before the Court decides whether to approve the settlement. If the Court
9 approves the settlement and any appeals are resolved, an administrator appointed by the Court
10 will make the payments that the settlement allows.

11 This package explains the lawsuit, the settlement, Class Members' legal rights, what
12 benefits are available, who is eligible for them, and how to get them.

13 The Court in charge of the case is the United States District Court for the Northern
14 District of California, and the case is known as *Rudolph v. UTStarcom, et al*, 3:07-CV-04578-
15 SI (N.D. Cal.). This case was assigned to the Honorable United States District Judge Susan
16 Illston. The persons who sued are called the Plaintiffs; and the court-appointed Lead Plaintiff,
17 James R. Bartholomew, was appointed on December 18, 2007. The company and the persons
18 they sued, UTSI, Hong Liang Lu, Ying Wu, Michael Sophie, and Francis Barton are called
19 the Defendants.

21 2. What is this lawsuit about?

22 Lead Plaintiff alleges that between 2000 and 2002, UTSI backdated stock options
23 granted to the individual defendants to a day on or near when UTSI stock was at an usually
24 low and favorable price. Lead Plaintiff further alleges that as a result of the backdating,
25 UTSI overstated its profits and understated compensation during the class period. The
26 Defendants have vigorously denied and continue to deny any wrongdoing and insist that at all
27 times they acted properly and that, as a result, there is no liability to Plaintiffs or the Class.

1 Lead Plaintiff's Second Amended Complaint (the "Complaint") filed on May 16,
2 2008, alleges that Defendants violated Section 10(b) of the Securities Exchange Act of 1934
3 and Rule 10b-5, promulgated thereunder by the Securities and Exchange Commission. The
4 Complaint also alleges that financial statements were filed and other statements were issued
5 by and on behalf of UTSI that had materially false and misleading information about the
6 Company's options granting processes, the financial performance and condition of UTSI.
7 When this information became public, the Complaint alleges that the share price fell and
8 shareholders were damaged. The Complaint also asserted "control person" claims against the
9 individual Defendants under Section 20(a) of the Securities Exchange Act of 1934. The
10 lawsuit seeks money damages against the Defendants for violations of the federal securities
11 laws. Defendants have denied and continue to deny each and all of the claims and contentions
12 alleged by the Plaintiffs in the Litigation. Defendants continue to assert that they did not
13 violate Sections 10(b) or 20(a) of the Securities Exchange Act of 1934, that they did not
14 engage in any conduct that could give rise to any liability to Plaintiffs or the Class, that none
15 of the claimed statements of omissions caused damages to Plaintiffs or the Class, that none of
16 the claimed misstatements or omissions were material, and that any misstatement they may
17 have made were the result of excusable neglect and were not the result of any intention to
18 defraud.

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3. Why is this a class action?

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In a class action, one or more people called Class Representatives (in this case, the Lead Plaintiff James R. Bartholomew), sue on behalf of people who have similar claims. All persons with similar claims are Class Members, who together constitute the Class. Bringing a case, such as this one, as a class action allows the collective adjudication of many similar claims that might be economically too small to bring in individual actions. One court resolves the issues for all Class Members, except for those who exclude themselves from the Class.

1 **4. Why is there a settlement?**

2 Because of the risks associated with continuing to litigate and proceeding to trial, there
3 was a danger that Lead Plaintiff would not have prevailed on any of his claims, in which case
4 the Class would receive nothing. The Defendants have asserted that they did not engage in
5 any wrongful conduct and have no liability for any breach of the federal securities laws.
6 Further, the amount of damages recoverable by the Class was and is challenged by
7 Defendants, and Lead Plaintiff runs the risk that he cannot prove any compensable loss or
8 damages to the Class. Recoverable damages in this case are limited to losses caused by
9 conduct actionable under applicable law and, had the Litigation gone to trial, Defendants
10 would have asserted that all of the losses of Class Members were caused by non-actionable
11 market, industry or general economic factors. Defendants would also assert that throughout
12 the Class Period the uncertainties and risks associated with the purchase of UTSI common
13 stock were fully and adequately disclosed. Thus, there is a risk that Lead Plaintiff would not
14 have established any liability or damages against the Defendants.

15 The Court did not decide in favor of Lead Plaintiff or Defendants. Instead, both sides
16 agreed to a settlement. In this manner, they avoid the risks and cost of a trial, including the
17 risk that there would be no recovery by any members of the Class. The Lead Plaintiff and his
18 attorneys think the settlement is best for all Class Members. The settling Defendants in this
19 Action, while continuing to deny all allegations of wrongdoing or liability whatsoever,
20 recognize the expense, risks and uncertain outcome of litigation and appeals, especially in a
21 complex action such as this, and wish to avoid the uncertainties, burdens and costs associated
22 with further litigation.

23 **WHO IS IN THE SETTLEMENT**

24 To see if you will get money from this settlement, you must be a Class Member.

25 **5. How do I know if I am part of the settlement?**

1 The Court directed that, for the purposes of the proposed settlement, everyone who fits
2 this description is a Class Member: *all Persons who purchased or otherwise acquired shares*
3 *of UTStarcom, Inc. common stock between September 4, 2002 and July 24, 2007, inclusive.*

6. Are there exceptions to being included?

Excluded from the Class are the Defendants, UTSI, Hong Liang Lu, Ying Wu, Michael Sophie and Francis Barton, the present and former officers, directors and employees of UTSI, members of their immediate families and their legal representatives, heirs, successors or assigns and any entity in which Defendants or their successors have or had a controlling interest.

10 If one of the mutual funds in which you are invested purchased or otherwise acquired
11 UTSI Shares during the Class Period, that does not make you a Class Member. You are a
12 Class Member only if you directly purchased or otherwise acquired UTSI Shares during the
13 Class Period. Contact your broker to see if you purchased or otherwise acquired UTSI Shares
14 during the Class Period.

15 If you **sold** but did not purchase UTSI Shares during the Class Period, you are not a
16 Class Member. You are a Class Member only if you **purchased or otherwise acquired** your
17 shares during the Class Period.

7. What if I am still not sure if I am included?

If you are still not sure whether you are included, you can ask for free help. You can contact the Claims Administrator by writing to UTStarcom Securities Litigation, c/o Berdon Claims Administration LLC, P.O. Box 9014, Jericho, NY 11753-8914; by faxing to (516) 931-0810; by calling (800) 766-3330; or by visiting the website www.berdonclaims.com for more information. Or you can fill out and return the Proof of Claim form described in Question 10 on page to see if you qualify.

THE SETTLEMENT BENEFITS — WHAT YOU GET

1 **8. What does the settlement provide?**

2 Defendants have agreed to create a \$9.5 million fund to be distributed, after the
3 payment of claims administration and notice costs and Lead Counsel's attorneys' fees and
4 expenses as awarded by the Court, to all Class Members who send in a valid and timely Proof
5 of Claim form. In return, the Parties will agree to dismiss the Action and Lead Plaintiff and
6 all Class Members who do not opt out agree to release, relinquish and discharge all Released
7 Claims (including Unknown Claims) against the Defendants and their respective Related
8 Parties, whether or not these Class Members execute and deliver the Proof of Claim and
9 Release.

10 **9. How much will my payment be?**

11 Your share of the fund will depend on the total Recognized Claims represented by the
12 valid Proof of Claim forms that Class Members send in, how many UTSI Shares you bought
13 or acquired, how much you paid for them, and when you bought or acquired and whether or
14 when you sold them.

15 By reading the Plan of Allocation on page ___ of this Notice, you can calculate what is
16 called your Recognized Claim. It is unlikely that you will get a payment for 100% of your
17 Recognized Claim. After all Class Members have sent in their Proof of Claim forms, the
18 payment you get will be a part of the Net Settlement Fund equal to your Recognized Claim
19 divided by the total of everyone's Recognized Claims. Please refer to the Plan of Allocation
20 on page ___ for more information on your Recognized Claim.

21 **HOW YOU GET A PAYMENT — SUBMITTING A PROOF OF CLAIM FORM**

23 **10. How can I get a payment?**

24 To qualify for a payment, you must send in a Proof of Claim form. A Proof of Claim
25 form accompanies this Notice. You may also download a Proof of Claim form from the
26 Claims Administrator's website, www.berdonclaims.com. Read the instructions carefully, fill
27

1 out the Proof of Claim form, include all the documents the form asks for, sign it, and mail it
2 postmarked no later than October 26, 2009.

3

4 **11. When would I get my payment?**

5 The Court will hold a hearing on September 18, 2009, to decide whether to approve
6 the settlement. If the Court approves the settlement, one or more appeals may follow. It is
7 always uncertain how any such appeal will be resolved, and resolving them can take time,
8 perhaps more than a year. It also takes time for all the Proofs of Claim to be processed.

9

10 **12. What am I giving up to get a payment or stay in the Class?**

11 Unless you exclude yourself, you will remain a member of the Class, and that means
12 that, upon the "Effective Date," you will release all "Released Claims" (as defined below)
13 against the "Released Parties" (as defined below).

14

15 The "Effective Date" will occur when an Order entered by the Court approving the
16 settlement becomes final and not subject to appeal and when all conditions of the Stipulation
17 have been met.

18

19 "Released Claims" shall collectively mean all claims (including Unknown Claims as
20 defined below), demands, rights, liabilities and causes of action of every nature and
21 description whatsoever, known or unknown, whether or not concealed or hidden, asserted or
22 that might have been asserted, including, without limitation, claims for negligence, gross
23 negligence, breach of fiduciary duty of care and/or loyalty, fraud or violations of any state or
24 federal common law or statutes, rules or regulations, by the Lead Plaintiff or any Class
25 Member against the Released Persons (as defined below) arising out of or based upon (1) the
26 purchase, other acquisition, retention or sale of any securities of UTSI, by Lead Plaintiff or
27 any Class Member during the Class Period, and (2) the events and facts alleged in Lead
28 Plaintiff's Second Amended Complaint concerning UTSI's stock option grants.

1 “Released Persons” means each and all of the Defendants and their Related Parties (as
2 defined below).

3 “Related Parties” means each of a Defendant’s past or present directors, officers,
4 employees, partners, insurers, co-insurers, reinsurers, attorneys, accountants or auditors,
5 banks or investment banks, advisors, personal or legal representatives, predecessors,
6 successors, parents, subsidiaries, divisions, assigns, spouses, heirs, related or affiliated
7 entities, any entity in which a Defendant or UTSI has a controlling interest, any member of an
8 Individual Defendant’s immediate family, or any trust of which any Individual Defendant is
9 the settlor or which is for the benefit of any Individual Defendant and/or member(s) of his
10 family.

11 “Unknown Claims” means any Released Claims which the Plaintiffs or any Class
12 Member does not know or suspect to exist in his, her or its favor at the time of the release of
13 the Released Persons which, if known by him, her or it, might have affected his, her or its
14 settlement with and release of the Released Persons, or might have affected his, her or its
15 decision not to object to this settlement. With respect to any and all Released Claims, the
16 Settling Parties stipulate and agree that, upon the Effective Date, the Plaintiffs shall expressly
17 waive, and each of the Class Members shall be deemed to have, and by operation of law shall
18 have, expressly waived, the provisions, rights and benefits of California Civil Code §1542,
19 which provides:

20 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH
21 THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS
22 OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE,
23 WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY
24 AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

25 The Lead Plaintiff shall expressly waive, and each of the Class Members shall be deemed to
26 have, and by operation of law shall have, expressly waived, any and all provisions, rights and
27 benefits conferred by any law of any state or territory of the United States, or principle of
28 common law, which is similar, comparable or equivalent to California Civil Code §1542. The
Plaintiffs and/or each of the Class Members may hereafter discover facts in addition to or

1 different from those which he, she or it now knows or believes to be true with respect to the
2 subject matter of the Released Claims, but the Plaintiffs shall expressly waive, and each Class
3 Member, upon the Effective Date, shall be deemed to have, and by operation of the Judgment
4 shall have, fully, finally, and forever settled and released any and all Released Claims, known
5 or unknown, suspected or unsuspected, contingent or non-contingent, whether or not
6 concealed or hidden, which now exist, or heretofore have existed, upon any theory of law or
7 equity now existing or coming into existence in the future, including, but not limited to,
8 conduct which is negligent, intentional, with or without malice, or a breach of any duty, law
9 or rule, without regard to the subsequent discovery or existence of such different or additional
10 facts. The Plaintiffs acknowledge, and each of the Class Members shall be deemed by
11 operation of law to have acknowledged, that the foregoing waiver was separately bargained
12 for and a key element of the settlement of which this release is a part.

13 If you remain a member of the Class, all of the Court's orders will apply to you and
14 legally bind you.

15 **EXCLUDING YOURSELF FROM THE SETTLEMENT**

16 If you do not want a payment from this settlement, but you want to keep any right you
17 may have to sue or continue to sue UTSI and the other Released Parties on your own about
18 the Released Claims, then you must take steps to exclude yourself — or as it is sometimes
19 referred to, you must "opt out" of the settlement Class. The settling Defendants may
20 withdraw from and terminate the Settlement if Class Members who purchased or otherwise
21 acquired during the Class Period five percent (5%) or more of outstanding UTSI Shares
22 exclude themselves from the Class.

23
24 **13. How do I get out of the proposed settlement?**

25 To exclude yourself from the settlement Class, you must send a letter by mail stating
26 that you "request exclusion from the Class in the *Rudolph v. UTStarcom, et al*, 3:07-CV-
27 04578-SI (N.D. Cal.)." Your letter must state the date(s), price(s) and number(s) of shares of
28

1 all your purchases, acquisitions and sales of UTSI Shares during the Class Period. In
2 addition, be sure to include your name, address, daytime telephone number and your
3 signature. You must mail your exclusion request **postmarked no later than August 21,**
4 **2009** to the Claims Administrator at:

5 UTStarcom Securities Litigation – Exclusion Requests
6 c/o Berdon Claims Administration, LLC
7 P.O. Box 9014
8 Jericho, NY 11753-8914

9 **You cannot exclude yourself by telephone, by fax or by e-mail.** If you ask to be
10 excluded, you will not get any settlement payment, and you cannot object to the settlement.
11 You will not be legally bound by anything that happens in this lawsuit, and you may be able
12 to sue UTSI and the other Released Parties about the Released Claims in the future.

13 **14. If I do not exclude myself, can I sue UTSI and the other Released Persons later for
14 the Released Claims?**

15 No. Unless you exclude yourself, you give up any rights to sue UTSI and the other
16 Released Parties, or to enforce any existing judgments against any of the Released Parties, for
17 any and all Released Claims. If you have a pending lawsuit against UTSI or the other
18 Released Parties, speak to your lawyer in that case immediately, to determine if you have to
19 exclude yourself from *this* Class to continue your own lawsuit. Remember, the exclusion
deadline is August 21, 2009.

20 **15. If I exclude myself, can I get money from the proposed settlement?**

21 No. **If you exclude yourself, do not send in a Proof of Claim form** to ask for any
22 money. But, you may exercise any right you may have to sue, continue to sue or be part of a
23 different lawsuit against UTSI and the other Released Parties about the Released Claims.

24 **THE LAWYERS REPRESENTING YOU**

25 **16. Do I have a lawyer in this case?**

1 The Court appointed the law firm of Finkelstein Thompson LLP in San Francisco,
2 California and Washington, D.C. to represent all Class Members. These lawyers are called
3 Plaintiffs' Lead Counsel. You will **not** be separately charged for these lawyers. If you want
4 to be represented by your own lawyer, you may hire one at your own expense.

5

6 **17. How will the lawyers be paid?**

7 Plaintiffs' Lead Counsel are moving the Court to award attorneys' fees from the
8 Settlement Fund in an amount not to exceed thirty-three and one third percent (33.33%) of the
9 Gross Settlement Fund and for reimbursement of their expenses, plus interest on such fees and
10 expenses at the same rate as earned by the Settlement Fund. Plaintiffs' Lead Counsel, without
11 further notice to the Class, may subsequently apply to the Court for fees and expenses
12 incurred in connection with administering and distributing the settlement proceeds to the
13 members of the Class and any proceedings subsequent to the Final Settlement Hearing.

14

OBJECTING TO THE SETTLEMENT

15 You can tell the Court that you do not agree with the settlement or some part of it.

16 **18. How do I tell the Court that I do not like the proposed settlement?**

17 If you are a Class Member, you can object to the settlement or any of its terms, the
18 proposed Plan of Allocation, or the application by Plaintiffs' Lead Counsel for an award of
19 fees and reimbursement of expenses. You may write to the Court setting out your objections.
20 You may give reasons why you think the Court should not approve any or all of the settlement
21 terms or arrangements and submit any documentation you believe is appropriate. The Court
22 will only consider your views if you file a proper objection within the deadline identified and
23 according to the following procedures.

24

25 To object, you must send a signed letter or other court submission stating that you
26 object to the proposed settlement in *Rudolph v. UTStarcom, et al*, 3:07-CV-04578-SI (N.D.
27 Cal.). You must include your name, address, telephone number, and your signature, identify
28 the date(s), price(s) and number(s) of shares of all purchases and sales of the UTSI Shares you

1 made during the Class Period, and state the reasons why you object to the settlement. Your
2 objection must be filed with the Court and served on all the following counsel so that it is
3 actually received not merely postmarked on or before August 21, 2009:

4 **COURT:**

5 Clerk of the Court
6 United States District Court Northern District of California
7 450 Golden Gate Ave.
8 San Francisco, CA 94102

9 **PLAINTIFF'S LEAD COUNSEL:**

10 Donald J. Enright, Esq.
11 FINKELSTEIN THOMPSON LLP
12 1050 30th Street, N.W.
13 Washington, D.C. 20007

14 **DEFENSE COUNSEL:**

15 Terry T. Johnson, Esq.
16 WILSON SONSINI GOODRICH & ROSATI
17 650 Page Mill Road
18 Palo Alto, CA 94304-1050

19 You do not need to go to the Final Settlement Hearing to have your written objection
20 considered by the Court. At the Final Settlement Hearing, any Class Member who has not
21 previously submitted a request for exclusion from the Class and who has complied with the
22 procedures set out in this Question 18 and in Questions 20 and 22 below for filing with the
23 Court and providing to the counsel for the Class and settling Defendants a statement of an
24 intention to appear at the Final Settlement Hearing may also appear and be heard, to the extent
allowed by the Court, to state any objection to the settlement, the Plan of Allocation or
Plaintiff's Lead Counsel's motion for an award of attorneys' fees and reimbursement of
expenses. Any such objector may appear in person or arrange, at that objector's expense, for
a lawyer to represent the objector at the Hearing.

25
26 **19. What is the difference between objecting and excluding?**

27
28

1 Objecting is simply telling the Court that you do not like something about the
2 proposed settlement. You can object only if you stay in the Class. Excluding yourself is
3 telling the Court that you do not want to be part of the Class. If you exclude yourself, you
4 have no basis to object because the case no longer affects you.

5

6 **THE COURT'S FINAL SETTLEMENT HEARING**

7 The Court will hold a hearing to decide whether to approve the proposed settlement.
8 You may attend and you may ask to speak, but you do not have to.

9 **20. When and where will the Court decide whether to approve the proposed settlement?**

10 The Court will hold a Final Settlement Hearing at 9:00 a.m. on September 18, 2009, at
11 the United States District Court for the Northern District of California, 450 Golden Gate
12 Avenue, San Francisco, CA 94102. At this hearing the Court will consider whether the
13 settlement is fair, reasonable and adequate. At the Final Settlement Hearing, the Court also
14 will consider the proposed Plan of Allocation for the proceeds of the settlement and the
15 application of Plaintiff's Lead Counsel for attorneys' fees and reimbursement of expenses.
16 The Court will take into consideration any written objections filed in accordance with the
17 instructions at question 18. The Court also may listen to people who have properly indicated,
18 within the deadline identified above, an intention to speak at the hearing; but decisions
19 regarding the conduct of the hearing will be made by the Court. (Please refer to question 22
20 for more information about speaking at the hearing.) The Court will also decide to the
21 amount of attorneys' fees and expenses to award Plaintiff's Counsel. After the hearing, the
22 Court will decide whether to approve the settlement. We do not know how long these
23 decisions will take.

24 You should be aware that the Court may change the date and time of the Final
25 Settlement Hearing. Thus, if you want to come to the hearing, you should check with
26 Plaintiff's Lead Counsel before coming to be sure that the date and/or time has not changed.

27

28

1 **21. Do I have to come to the hearing?**

2 No. Plaintiff's Lead Counsel will answer questions the Court may have, but you are
3 welcome to come at your own expense. If you send an objection, you do not have to come to
4 Court to talk about it. As long as you filed your written objection on time, the Court will
5 consider it. You may also pay your own lawyer to attend, but attendance is not mandatory.
6 Class Members do not need to appear at the hearing or take any other action to indicate their
7 approval.

8 **22. May I speak at the hearing?**

9 If you object to the settlement, you may ask the Court for permission to speak at the
10 Final Settlement Hearing. To do so, you must include with your objection (see question 18
11 above) a statement stating that it is your "Notice of Intention to Appear in *Rudolph v.*
12 *UTStarcom, et al*, 3:07-CV-04578-SI." Class members who intend to object to the settlement,
13 the Plan of Allocation, or counsel's application for an award of attorneys' fees and
14 reimbursement of expenses and desire to present evidence at the Final Settlement Hearing
15 must include in their written objections the identity of any witnesses they propose to call to
16 testify and any exhibits they intend to offer into evidence at the Final Settlement Hearing.
17 You cannot speak at the hearing if you excluded yourself from the Class or if you have not
18 provided written notice of your intention to speak at the Final Settlement Hearing by the
19 deadline identified, and in accordance with the procedures described in question 18 above.

20 **IF YOU DO NOTHING**

21 **23. What happens if I do nothing at all?**

22 If you do nothing, you will get no money from this settlement and, if the settlement
23 becomes final, you will be precluded from starting, continuing with or being part of any other
24 lawsuit against UTSI and the other Released Parties about the Released Claims in this case,
25 ever again. To share in the Net Settlement Fund you must submit a Proof of Claim form (see
26 question 10). To start, continue or be a part of any other lawsuit against UTSI and the other
27

1 Released Parties about the Released Claims in this case you must exclude yourself from this
2 class (see question 13).

3 **GETTING MORE INFORMATION**

4 **24. Are there more details about the proposed settlement?**

5 This notice summarizes the proposed settlement. More details are in a Stipulation of
6 Settlement dated as of May 14, 2009 (the "Stipulation"). You may obtain a copy of the
7 Stipulation by writing to Donald J. Enright, Esq., Finkelstein Thompson LLP, 1050 30th
8 Street, N.W., Washington, D.C. 20007 or on the Claims Administrator's website at
9 www.berdonclaims.com.

10 You also can contact the Claims Administrator by mail at UTStarcom Securities
11 Litigation, c/o Berdon Claims Administration LLC, P.O. Box 9014, Jericho, NY 11753-8914;
12 by fax at (516) 931-0810; by toll-free phone at (800) 766-3330; or by visiting the website
13 www.berdonclaims.com to obtain a Proof of Claim form, plus other information to help you
14 determine whether you are a Class Member and whether you may be eligible for a payment.
15

16 **25. How do I get more information?**

17 For even more detailed information concerning the matters involved in this Action,
18 reference is made to the pleadings, to the Stipulation, to the Orders entered by the Court and
19 to the other papers filed in the Action, which may be inspected at the Office of the Clerk of
20 the United States District Court for the Northern District of California, 450 Golden Gate
21 Avenue, San Francisco, CA 94102, during regular business hours.
22

PLAN OF ALLOCATION OF NET SETTLEMENT FUND

AMONG CLASS MEMBERS

23 The \$9,500,000 Cash Settlement Amount and the interest earned thereon shall be the
24 Gross Settlement Fund. The Gross Settlement Fund, less all taxes, approved costs, fees and
25 expenses (the "Net Settlement Fund") shall be distributed to members of the Class who
26 submit valid Proofs of Claim ("Authorized Claimants").
27

1 The Claims Administrator shall determine each Authorized Claimant's *pro rata* share
2 of the Net Settlement Fund based upon each Authorized Claimant's "Recognized Claim."
3 The Recognized Claim formula is not intended to be an estimate of the amount of what a
4 Class Member might have been able to recover after a trial; nor is it an estimate of the amount
5 that will be paid to Authorized Claimants pursuant to the settlement. The Recognized Claim
6 formula is the basis upon which the Net Settlement Fund will be proportionately allocated to
7 the Authorized Claimants.

8 The Class Period begins September 4, 2002 and ends on July 24, 2007.

9 The following Plan of Allocation formula reflects the Lead Plaintiff's assertion that
10 the price of UTStarcom Shares was allegedly inflated throughout the Class Period, and such
11 artificial inflation was reduced and ultimately eliminated by two corrective disclosures on
12 November 7, 2006 and July 24, 2007. Following the November 7, 2006 disclosure of
13 UTStarcom's options grant investigation, the Company's share price experienced a
14 statistically significant share price drop of \$0.91 from a closing price of \$10.23 on November
15 7, 2006 to a closing price of \$9.32 on November 9, 2006. The average closing price of UTSI
16 Shares for the 90-day period following the alleged partial corrective disclosure, *i.e.*, between
17 November 7, 2006 and February 5, 2007, was \$8.96 per share. Following the July 24, 2007
18 disclosure of the results of the options grant investigation and the related restatement of the
19 Company's historic financial reports, the share price dropped a statistically significant \$1.03
20 from a closing price of \$4.73 on July 23, 2007 to a closing price of \$3.70 on July 25, 2007.

21 For each share of UTStarcom common stock purchased or otherwise acquired from
22 September 4, 2002 through November 7, 2006, and:

23 (a) sold prior to the close of trading on November 7, 2006, the Recognized Claim is
24 zero;

25 (b) sold during the period from November 8, 2006 through July 24, 2007, the
26 Recognized Claim is *the lesser of* (i) \$0.91 or (ii) the purchase price minus \$8.96;

27

28

(c) retained at the close of trading on July 24, 2007, the Recognized Loss is *the lesser of* (i) 1.94 or (ii) the purchase price minus \$7.93 (\$8.96 - \$1.03).

3 For each share of UTStarcom common stock purchased or otherwise acquired during
4 the period November 8, 2006 through July 24, 2007, and:

5 (a) sold prior to the close of trading on July 24, 2007, the Recognized Claim is zero;

6 (b) retained at the close of trading on July 24, 2007, the Recognized Claim is \$1.03.

General Provisions:

13 having exercised an option, the option premium should be incorporated into the price
14 accordingly;

15 (d) In processing the claims, the first-in, first-out basis ("FIFO") will be applied to
16 purchases and sales, meaning that the Class Period sales will be matched first against any
17 UTSI shares held at the beginning of the Class Period and then against purchases in
18 chronological order.

19 (e) The date of covering a "short sale" is deemed to be the date of purchase of
20 UTSI common stock. The date of a "short sale" is deemed to be the date of sale of UTSI
21 common stock. Shares originally sold short will have a Recognized Claim of zero.

22 (f) All profits will be subtracted from all losses, computed in the manner
23 described above, to determine the net Recognized Claim of each Authorized Claimant.

24 The receipt or grant of an *inter vivos* gift or a distribution from an estate of UTSI
25 Shares during the Class Period shall not be deemed to be a purchase of UTSI Shares. The
26 recipient of a gift or a distribution from an estate of UTSI Shares, however, shall be eligible to
27 file a Proof of Claim and participate in the Settlement to the extent the particular donor or

1 decedent as the actual purchaser of such UTSI Shares would have been eligible, and based
2 upon the circumstances of such purchase within the Class Period; however, donee and donor
3 may not both claim with regard to the same UTSI Shares. If both donor and donee make such
4 a claim, only the claim filed by the donor will be honored.

5 Class Members who do not submit valid Proofs of Claim will not share in the
6 settlement proceeds. Class Members who do not either submit a request for exclusion or
7 submit a valid Proof of Claim will nevertheless be bound by the settlement and the Order and
8 Final Judgment of the Court dismissing this Action.

9 Distributions will be made to Authorized Claimants after all claims have been
10 processed and after the Court has finally approved the settlement. If any funds remain in the
11 Net Settlement Fund by reason of un-cashed distributions or otherwise, then, after the Claims
12 Administrator has made reasonable and diligent efforts to have Class Members who are
13 entitled to participate in the distribution of the Net Settlement Fund cash their distributions,
14 any balance remaining in the Net Settlement Fund one (1) year after the initial distribution of
15 such funds shall be redistributed to Class Members who have cashed their initial distributions
16 and who would receive at least \$10.00 from such re-distribution, after payment of any unpaid
17 costs or fees incurred in administering the Net Settlement Fund for such re-distribution.

18 Plaintiffs, settling Defendants, their respective counsel, and all other Released Parties
19 shall have no responsibility for or liability whatsoever for the investment or distribution of the
20 Settlement Fund, the Net Settlement Fund, the Plan of Allocation or the determination,
21 administration, calculation or payment of any Proof of Claim or non-performance of the
22 Claims Administrator, the payment or withholding of taxes owed by the Settlement Fund or
23 any losses incurred in connection therewith.

24

25 **PROHIBITED TRANSACTIONS**

26

27

SPECIAL NOTICE TO ERISA PLANS AND PLAN FIDUCIARIES

If you received this notice as a fiduciary of a plan subject to the requirements of the
3 Employee Retirement Income Security Act of 1974, as amended (“ERISA”), or as
4 representative of an entity deemed to hold ERISA plan assets (collectively, “ERISA Plans”),
5 and such ERISA Plan is a Class Member, you should be aware that the participation of the
6 ERISA Plan in the settlement may be subject to rules prohibiting ERISA Plans from entering
7 into certain transactions with “parties in interest.” A violation of the prohibited transaction
8 rule by an ERISA Plan could expose the “parties in interest” to tax penalties and could create
9 a risk that the settlement would have to be unwound to “correct” the prohibited transaction.
10 Because of these risks, in order to participate in the settlement, any Class Member that is an
11 ERISA Plan must satisfy the requirements for an exemption from the prohibited transaction
12 rule set forth in 26 U.S.C. § 4975.

14 Any such Class Member that is an ERISA Plan shall notify the Court, Lead Counsel
15 and Defendants' Counsel in writing that it is such a plan; and, if such Class Member is not
16 submitting a request for exclusion from the settlement, that Class Member must submit a
17 certification by its fiduciary responsible for assessing the settlement, that such Class Member
18 has complied with the requirements for exemption from the prohibited transaction rule.
19 Copies of such notice and certification are to be served on the Court, Lead Counsel and
20 Defendants' Counsel at the addresses identified in connection with question 18 within ten (10)
21 days of receipt of this Notice. Any Class Member that is an ERISA Plan, and has submitted a
22 Proof of Claim but has failed to provide the indicated certification, or notice to the Court,
23 Lead Counsel and Defendants' Counsel, shall be deemed to have requested exclusion and
24 shall be excluded from the settlement. Any Class Member that is an ERISA Plan but fails to
25 submit a Proof of Claim will not be deemed to have requested exclusion and will be
26 precluded from starting, continuing with or being part of any other lawsuit against UTSC and
the other Released Parties about the Released Claims (see question 23).

SPECIAL NOTICE TO SECURITIES BROKERS AND OTHER NOMINEES

If you held shares of UTSI common stock that were purchased or otherwise acquired between September 4, 2002 and July 24, 2007, inclusive, for the beneficial interest of a person or organization other than yourself, the Court has directed that, **within seven (7) days of your receipt of this Notice**, you either (a) provide to the Claims Administrator the name and last known address of each person or organization for whom or which you held UTSI shares that were purchased or otherwise acquired between September 4, 2002 and July 24, 2007, inclusive – **preferably in an MS Excel data table setting forth: (i) title/registration, (ii) street address, (iii) city/state/zip; or on electronic mailing labels in MS Word or WordPerfect files; or on physical mailing labels** - or (b) request additional copies of this Notice and the Proof of Claim form, which will be provided to you free of charge, and within ten (10) days mail the Notice and Proof of Claim form directly to the beneficial owners of those UTSI shares. If you choose to follow alternative procedure (b), the Court has directed that, upon such mailing, you send a statement to the Claims Administrator confirming that the mailing was made as directed. You are entitled to reimbursement from the Settlement Fund of your reasonable expenses actually incurred in connection with the foregoing, including reimbursement of postage expense and the cost of ascertaining the names and addresses of beneficial owners. Those expenses will be paid after request and submission of appropriate supporting documentation. All communications concerning the foregoing should be addressed to the Claims Administrator:

UTStarcom Securities Litigation
c/o Berdon Claims Administration, LLC
P.O. Box 9014
Jericho, NY 11753-8914
Toll-free phone: (800) 766-3330
Facsimile: (516) 931-0810
Website: www.berdonclaims.com

DO NOT TELEPHONE THE COURT REGARDING THIS NOTICE.

EXHIBIT A-2

1 Mark Punzalan (State Bar No. 247599)
2 mpunzalan@finkelsteinthompson.com
3 **FINKELSTEIN THOMPSON LLP**
4 100 Bush Street, Suite 1450
5 San Francisco, California 94104
6 Telephone: (415) 398-8700
7 Facsimile: (415) 398-8704

8 Counsel for Lead Plaintiff James R. Bartholomew

9
10 **UNITED STATES DISTRICT COURT**
11
12 **NORTHERN DISTRICT OF CALIFORNIA**
13
14 **SAN FRANCISCO DIVISION**

15 PETER RUDOLPH, individually and on
16 behalf of all others similarly situated,

17 Case No. 3:07-CV-04578-SI

18 Plaintiff,

19 vs.

20 UTSTARCOM, HONG LIANG LU, YING
21 WU, MICHAEL SOPHIE, FRANCIS
22 BARTON, AND THOMAS TOY,

23
24 **PROOF OF CLAIM AND RELEASE**
25
26 **EXHIBIT A-2**

27 Defendants.

28

PROOF OF CLAIM AND RELEASE

DEADLINE FOR SUBMISSION: OCTOBER 26, 2009

IF YOU PURCHASED UTSTARCOM, INC. ("UTSI") COMMON STOCK DURING THE PERIOD SEPTEMBER 4, 2002 THROUGH JULY 24, 2007, INCLUSIVE, YOU ARE A CLASS MEMBER.

Excluded from the Class are the Defendants, UTStarcom, Inc., Hong Liang Lu, Ying Wu, Michael Sophie and Francis Barton, the present and former officers and directors of UTSI, members of the immediate families of defendants and their legal representatives, heirs successors or assigns and any entity in which Defendants or their successors have or had a controlling interest.

Also excluded from the Class are those Persons who timely and validly request exclusion from the class pursuant to the Notice of Pendency and Proposed Settlement of Class Action accompanying this Proof of Claim and Release.

I. GENERAL INSTRUCTIONS

A. To recover as a Member of the Class based on your claims in the action entitled *Rudolph v. UTStarcom, et al*, 3:07-CV-04578-SI (N.D. Cal.) (the "Litigation"), you must complete and, on page ___ hereof, sign this Proof of Claim and Release. If you fail to file a properly addressed Proof of Claim and Release (as set forth in paragraph C below), your claim may be rejected and you may be precluded from any recovery from the Net Settlement Fund created in connection with the proposed settlement of the litigation.

B. Submission of this Proof of Claim and Release, however, does not assure that you will share in the proceeds of settlement in the Litigation.

1 C. YOU MUST MAIL YOUR COMPLETED AND SIGNED PROOF OF
2 CLAIM AND RELEASE **POSTMARKED ON OR BEFORE OCTOBER 26, 2009,**
3 ADDRESSED TO THE CLAIMS ADMINISTRATOR AS FOLLOWS:

UTStarcom Securities Litigation
c/o Berdon Claims Administration LLC
P.O. Box 9014
Jericho, NY 11753-8914

8 **You will bear all risks of delay or non-delivery of your claim.** If you are NOT a Member
9 of the Class (as defined in the "Notice of Pendency and Proposed Settlement of Class
10 Action") DO NOT submit a Proof of Claim and Release form.

11 D. If you are a Member of the Class, you are bound by the terms of any judgment
12 entered in the litigation, WHETHER OR NOT YOU SUBMIT A PROOF OF CLAIM AND
13 RELEASE.

II. CLAIMANT IDENTIFICATION INSTRUCTIONS

15 A. If you purchased UTSI common stock and held the certificate(s) in your name,
16 you are the beneficial owner as well as the record owner. If, however, the certificate(s) were
17 registered in the name of a third party, such as a nominee or brokerage firm, you are the
18 beneficial owner and the third party is the record owner.

19 B. Use Section IV of this form entitled "Claimant Identification" to identify each
20 owner of record ("nominee"), if different from the beneficial owner of UTSI common stock
21 which forms the basis of this claim.

22 C. THIS CLAIM MUST BE FILED BY THE ACTUAL BENEFICIAL
23 OWNERS, OR THE LEGAL REPRESENTATIVE OF SUCH OWNERS, OF THE
24 UTSTARCOM COMMON STOCK UPON WHICH THIS CLAIM IS BASED.

1 E. All joint owners must sign this claim. Executors, administrators, guardians,
2 conservators and trustees must complete and sign this claim on behalf of persons represented
3 by them. Documentation establishing their authority must accompany this claim and their
4 titles or capacities must be stated.

5 F. The Social Security or Taxpayer Identification number and telephone number
6 of the beneficial owner may be used in verifying the claim. Failure to provide the foregoing
7 information could delay verification of your claim or result in rejection of the claim.

8 **III. TRANSACTION SCHEDULE INSTRUCTIONS**

9 A. Use Section V of this form entitled "Schedule of Transactions in UTSI
10 Common Stock" to supply all required details of your transaction(s) in UTSI common stock.
11 If you need more space or additional schedules, attach separate sheets giving all of the
12 required information in substantially the same form. Sign and print or type your name and
13 Social Security or Taxpayer Identification number on each additional sheet.

14 B. List each transaction in the Class Period separately and in chronological order,
15 by trade date (not the "settlement" date), beginning with the earliest. You must accurately
16 provide the month, day and year of each transaction you list.

17 C. The date of covering a "short sale" is deemed to be the date of purchase of
18 UTSI common stock. The date of a "short sale" is deemed to be the date of sale of UTSI
19 common stock. Shares originally sold short will have a Recognized Claim of zero.

20 D. The price per share, paid or received, should be exclusive of all commissions,
21 taxes, fees and other charges.

22 E. Copies of broker confirmation slips or monthly statements of your transactions
23 in UTSI common stock must be attached to your claim. If such documents are not in your
24 possession, please obtain equivalent contemporaneous documents from your broker or
25 financial advisor. A complete list of acceptable supporting documentation can be found at the
26 Claims Administrator's website: www.berdonclaims.com (click on "Supporting

27

28

1 Documentation" under "Questions and Procedures"). Failure to provide this documentation
2 could delay verification of your claim or result in rejection of your claim.

3 F. If your trading activity during the Class Period exceeds 50 transactions, you
4 must provide, in electronic file, all purchase and sale information required in the Schedule of
5 Transactions. For a copy of instructions and parameters concerning such a submission, ..
6 contact the Claims Administrator by toll-free phone at (800) 766-3330, by fax: (516) 931-
7 0810, or via the website at www.berdonclaims.com.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

Rudolph v. UTStarcom, Inc., et al

UTSTARCOM

PROOF OF CLAIM

Must be received by the Claims Administrator postmarked no later than October 26, 2009

IV. CLAIMANT IDENTIFICATION

Please Type or Print

6. Beneficial Owner's Name (*as it appears on your brokerage statement*)

Joint Beneficial Owner's name (as it appears on your brokerage statement)

20 Street Address

State

Zip Code

Foreign Province

Foreign Country

26 Social Security Number or
27 Taxpayer Identification Number

—OR

Tax Payer Identification Number

1
2 Specify one of the following:
3

4

5 Individual/Sole Proprietor Joint Ownership Corporation UGMA Custodian
6 Partnership Pension Plan Estate Trust IRA Other: _____
7

8

9 Area Code & Telephone Number (day) Area Code & Telephone Number (evening)
10

11 Record Owner's Name and Address (if different from beneficial owner listed above)
12

13

14 **V. SCHEDULE OF TRANSACTIONS IN UTSI COMMON STOCK**

15 A. State the total number of shares of UTSI common stock owned at the **close** of trading
16 on September 3, 2002, long or short (*if none, enter "0"; if other than zero, must be*
17 *documented*): _____
18

19 B. Separately list each and **every purchase** of UTSI common stock during the period
20 September 4, 2002 **through** July 24, 2007 and provide the following information (*must be*
21 *documented*):

22 Trade Date (list chronologically) Month/Day/Year	23 Number of Shares Purchased	24 Price per Share (excluding commissions, taxes and fees)

25 C. Separately list each and **every sale** of UTSI common stock during the period
26 September 4, 2002 through July 24, 2007, and provide the following information (*must be*
27 *documented*):

28 Trade Date (list chronologically) Month/Day/Year	29 Number of Shares Sold	30 Price per Share (excluding commissions, taxes and fees)

1		
---	--	--

2 D. State the total number of shares of UTSI common stock owned at the close of trading
 3 on July 24, 2007, long or short (*if none, enter "0"; if other than zero, must be
 documented*): _____

4 E. Please check applicable box:

5 I certify that the submitting party is **not** an ERISA plan

6 I/We certify that the submitting party is an ERISA plan and has complied with the
 applicable ERISA exemption

7 **If you need additional space, attach the required information on separate, numbered
 8 sheets in the same format as above and print your name and Social Security or
 Taxpayer Identification number at the top of each additional sheet.**

9 **YOU MUST READ THE RELEASE AND SIGN ON PAGE _____**

10 **VI. SUBMISSION TO JURISDICTION OF COURT AND ACKNOWLEDGMENTS**

11 I/We submit this Proof of Claim and Release under the terms of the Stipulation of
 12 Settlement described in the Notice. I/We also submit to the jurisdiction of the United States
 13 District Court for the Northern District of California with respect to my/our claim as a Class
 14 Member and for purposes of enforcing the release set forth herein. I/We further acknowledge
 15 that I/we am/are bound by and subject to the terms of any judgment that may be entered in the
 16 Litigation. I agree to furnish additional information to Lead Counsel to support this claim if
 17 required to do so. I/we have not submitted any other claim covering the same purchases or
 18 sales of UTSI common stock during the Class Period and know of no other person having
 19 done so on my/our behalf.

20 **VII. RELEASE**

21 A. I/We hereby acknowledge full and complete satisfaction of, and do hereby
 22 fully, finally and forever settle, release and discharge from the Released Claims (defined
 23 below) each and all of the Defendants and their "Related Parties," defined as each of a
 24 Defendant's past or present directors, officers, employees, partners, insurers, co-insurers,
 25 reinsurers, attorneys, accountants or auditors, banks or investment banks, advisors, personal
 26
 27

1 or legal representatives, predecessors, successors, parents, subsidiaries, divisions, assigns,
2 spouses, heirs, related or affiliated entities, any entity in which a Defendant has a controlling
3 interest, any member of an Individual Defendant's immediate family, or any trust of which
4 any Individual Defendant is the settlor or which is for the benefit of any Individual Defendant
5 and/or member(s) of his family (collectively the "Released Persons").

6 B. "Released Claims" shall collectively mean all claims (including Unknown
7 Claims as defined below), demands, rights, liabilities and causes of action of every nature and
8 description whatsoever, known or unknown, whether or not concealed or hidden, asserted or
9 that might have been asserted, including, without limitation, claims for negligence, gross
10 negligence, breach of fiduciary duty of care and/or loyalty, fraud or violations of any state or
11 federal common law or statutes, rules or regulations, by the Lead Plaintiff or any Class
12 Member against the Released Persons arising out of or based upon (1) the purchase, other
13 acquisition, retention or sale of any securities of UTSI, by Lead Plaintiff or any Class Member
14 during the Class Period, and (2) the events and facts alleged in Lead Plaintiff's Second
15 Amended Complaint concerning UTSI's stock option grants.

16 C. "Unknown Claims" means any Released Claim that the Lead Plaintiff, any
17 Class Member, and any other persons and entities whose Released Claims are being released
18 do not know or suspect to exist in their favor at the time of the release which, if known by
19 him, her, or it might have affected the decision to compromise the Released Claims, or the
20 decision whether to agree, object, or not object to this settlement. Upon the Effective Date,
21 the Lead Plaintiff, and any other persons or entities whose claims are being released shall
22 expressly waive and relinquish, and the other Class Members shall be deemed to have, and by
23 operation of the Judgment shall have, expressly waived and relinquished, to the fullest extent
24 permitted by law, the provisions, rights, and benefits conferred by Section 1542 of the
25 California Civil Code, which provides:

26 **A general release does not extend to claims which the creditor does not**
27 **know or suspect to exist in his or her favor at the time of executing the**

1 **release, which if known by him or her must have materially affected his or**
2 **her settlement with the debtor.**

3 The Lead Plaintiff, and any other persons or entities whose claims are being released shall
4 also expressly waive and relinquish, and the other Class Members shall also be deemed to
5 have, and by operation of the Judgment shall have, expressly waived and relinquished, to the
6 fullest extent permitted by law, the provisions, rights, and benefits conferred by any law of
7 any state or territory of the United States, or principle of common law, or of international or
8 foreign law, which is similar, comparable or equivalent to Section 1542 of the California Civil
9 Code. The Lead Plaintiff or Class Members may hereafter discover facts in addition to or
10 different from those which he, she or it now knows or believes to be true with respect to the
11 subject matter of this release, but it is their intention to finally and forever settle and release
12 the Released Claims notwithstanding any Unknown Claims they may have, as that term is
13 defined in this paragraph.

14 D. This release shall be of no force or effect unless and until the Court approves
15 the Stipulation of Settlement and the Stipulation becomes effective on the Effective Date (as
16 defined in the Stipulation).

17 E. I/We hereby warrant and represent that I/we have not assigned or transferred or
18 purported to assign or transfer, voluntarily or involuntarily, any matter released pursuant to
19 this release or any other part or portion thereof.

21 F. I/We hereby warrant and represent that I/we have included information about
22 all of my/our transactions in UTSI common stock which occurred during the Class Period as
23 well as the number of shares of UTSI common stock (if any) held at the close of trading on
24 September 3, 2002 and at the close of trading on July 24, 2007.

25 **VIII. CERTIFICATION**

26 **UNDER THE PENALTY OF PERJURY, I/WE CERTIFY THAT:**

27

28

1 A. The number shown on this form is my correct Social Security or Taxpayer Identification number.

3 B. I/We certify that I am/we are NOT subject to backup withholding under the provisions of Section 3406 (a)(1)(C) of the Internal Revenue Code.

4 **NOTE:** If you have been notified by the Internal Revenue Service that you are subject
5 to backup withholding, you must cross the word "NOT" in the sentence above.

7 C. I/We declare under penalty of perjury under the laws of the United States of
8 America that the foregoing information supplied by the undersigned and any supporting
9 documents attached hereto are true, correct and complete to the best of my/our knowledge,
10 information and belief, and that this Proof of Claim and Release was executed this _____
11 day of _____, in _____,

12 (Month/Year) (City) (State/Country)

13

Signature of Claimant

15 _____ (Print your name here)

(Print your name here)

16 | Page

—

¹² See, for example, the discussion of the 1992 Constitutional Convention in the *Constitutional Convention of 1992: The Final Report* (1993).

20 | Page

Digitized by srujanika@gmail.com

23 _____
24 _____
if other than an individual, (e.g., Executor,
President, Custodian, etc.)

25
26 **ACCURATE CLAIMS PROCESSING TAKES A SIGNIFICANT
AMOUNT OF TIME. THANK YOU FOR YOUR PATIENCE.**

Reminder Checklist:

1. Remember to sign the above release and declaration.
2. Remember to attach only **copies** of acceptable supporting documentation, a complete list of which can be found on the Claims Administrator's website.
3. Do not send originals of securities certificates.
4. Keep copies of the completed claim form and documentation for your own records.
5. If you desire an acknowledgment of receipt of your claim form, please send it Certified Mail, Return Receipt Requested, or its equivalent. **You will bear all risks of delay or non-delivery of your claim.**
6. If your address changes in the future, or if these documents were sent to an old or incorrect address, please send us **written** notification of your new address.
7. If you have any questions or concerns regarding your claim, please contact the Claims Administrator at:

UTStarcom Securities Litigation
c/o Berdon Claims Administration LLC
P.O. Box 9014
Jericho, NY 11753-8914
Toll-free phone: (800) 766-3330
Facsimile: (516) 931-0810
Website: www.berdonclaims.com

EXHIBIT A-3

1 Mark Punzalan (State Bar No. 247599)
2 mpunzalan@finkelsteinthompson.com
2 **FINKELSTEIN THOMPSON LLP**
3 100 Bush Street, Suite 1450
3 San Francisco, California 94104
4 Telephone: (415) 398-8700
4 Facsimile: (415) 398-8704
5

6 [Additional Counsel Listed on Signature Page]
7

8 Counsel for Lead Plaintiff James R. Bartholomew
9

8
9 **UNITED STATES DISTRICT COURT**
10 **NORTHERN DISTRICT OF CALIFORNIA**
11 **SAN FRANCISCO DIVISION**

11 PETER RUDOLPH, individually and on
12 behalf of all others similarly situated,

13 Plaintiff,

14 vs.

15 UTSTARCOM, HONG LIANG LU, YING
16 WU, MICHAEL SOPHIE, FRANCIS
BARTON, AND THOMAS TOY,

17 Defendants.

18 Case No. 3:07-CV-04578-SI

19
20 **SUMMARY NOTICE OF PENDENCY**
21 **AND PROPOSED SETTLEMENT OF**
22 **CLASS ACTION**

23 **EXHIBIT A-3**

24

25

26

27

28

SUMMARY NOTICE OF PENDENCY OF CLASS ACTION
AND PROPOSED SETTLEMENT

3 TO: ALL PERSONS WHO PURCHASED UTSTARCOM, INC. ("UTSI") COMMON
4 STOCK DURING THE PERIOD SEPTEMBER 4, 2002 THROUGH JULY 24, 2007,
5 INCLUSIVE (THE "CLASS")
6 YOU ARE HEREBY NOTIFIED, pursuant to Rule 23 of the Federal Rules of Civil
7 Procedure and an Order of the United States District Court for the Northern District of
8 California, that a hearing will be held at 9:00 a.m. on September 18, 2009, at the United States
9 District Court for the Northern District of California, 450 Golden Gate Avenue, San
10 Francisco, CA 94102, for the purpose of determining (1) whether the proposed settlement of
1 the claims in the Litigation for the sum of \$9,500,000 in cash should be approved by the Court
2 as fair, reasonable and adequate; (2) whether, thereafter, this Litigation should be dismissed
3 with prejudice as against the Defendants and a judgment entered releasing all Released
4 Claims against Defendants and each of their respective Related Parties as set forth in the
5 Stipulation of Settlement dated as of May 14, 2009; (3) whether the Plan of Allocation is fair,
6 reasonable and adequate and therefore should be approved; and (4) whether the application of
7 Lead Counsel for the payment of attorneys' fees and reimbursement of expenses incurred in
8 connection with prosecuting this Litigation against the Defendants should be approved.

19 IF YOU ARE A MEMBER OF THE CLASS DESCRIBED ABOVE, YOUR
20 RIGHTS WILL BE AFFECTED AND YOU MAY BE ENTITLED TO SHARE IN THE
21 SETTLEMENT FUND. If you have not received a detailed Notice of Pendency and Proposed
22 Settlement of Class Action and a copy of the Proof of Claim and Release form, you may
23 obtain a copy by contacting the Claims Administrator by mail at UTStarcom Securities
24 Litigation, c/o Berdon Claims Administration LLC, P.O. Box 9014, Jericho, NY 11753-8914;
25 by toll-free phone at (800) 766-3330; by fax at (516) 931-0810; or by visiting the website
26 www.berdonclaims.com. If you are a Class Member, in order to share in the distribution of

1 the Net Settlement Fund, you must submit a Proof of Claim and Release **postmarked no**
2 **later than October 26, 2009**, establishing that you are entitled to recovery.

3 If you desire to be excluded from the Class, you must submit a request for exclusion
4 **postmarked by August 21, 2009**, in the manner and form explained in the detailed Notice
5 referred to above. All Members of the Class who have not requested exclusion from the Class
6 will be bound by any judgment entered in the Litigation pursuant to the Stipulation of
7 Settlement.

8 Any objection to the settlement must be mailed or delivered such that it is received by
9 each of the following no later than August 21, 2009:

10 **COURT:**

11 Clerk of the Court
12 United States District Court Northern District of California
13 450 Golden Gate Ave.
14 San Francisco, CA 94102

15 **PLAINTIFFS' LEAD COUNSEL:**

16 Donald J. Enright, Esq.
17 FINKELSTEIN THOMPSON LLP
18 1050 30th Street, N.W.
19 Washington, D.C. 20007

20 **DEFENSE COUNSEL:**

21 Terry T. Johnson, Esq.
22 WILSON SONSINI GOODRICH & ROSATI
23 650 Page Mill Road
24 Palo Alto, CA 94304-1050

25 **PLEASE DO NOT CONTACT THE COURT OR THE CLERK'S OFFICE**

26 **REGARDING THIS NOTICE.** If you have any questions about the settlement, you may
27 contact Lead Counsel at the address listed above.

28 DATED: _____, 2009

BY ORDER OF THE COURT